

Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile Technologies  
and Social Media on Court Proceedings  
1501 W. Washington St., Suite 410  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of	)	
	)	
PETITION TO AMEND SUPREME	)	Supreme Court No. R-13-0012
COURT RULE 122	)	
	)	AMENDED PETITION
_____	)	

Petitioner respectfully files this amended petition, as provided by the Court’s Order establishing a modified comment period. The appendix contains proposed amendments to Supreme Court Rule 122 in two versions: (1) a “mark-up” showing changes the Wireless Committee made to the version submitted with the original rule petition, and (2) a “clean” version of Rule 122 as now proposed.

**I. Summary of comments received during the initial comment period.**

The State Bar of Arizona filed the sole comment during the initial comment period. The comment was comprehensive and constructive. The State Bar’s comment was also noteworthy because it did not endeavor to draft language for a modified

rule, but rather it identified areas the Wireless Committee should consider further. The Wireless Committee held a public meeting following the close of the initial comment period. In the process of considering the State Bar's comments, the Wireless Committee discussed additional ways to clarify and to streamline the text of the proposed rule, as more fully detailed below.

**II. Relationship between Rule 122 and Rule 122.1.** The State Bar's comment noted the relationship between existing Rule 122 and proposed Rule 122.1, and it pointed out specific inconsistencies between them. The Wireless Committee believes that its resulting modifications solidify the inter-relationship between these two rules by deleting inconsistent provisions and by using parallel terminology and cross-references. For example, the revised titles to these two rules are now more harmonious because both refer to the "place" where they operate:

*Rule 122:*

Formerly:	Use of Recording Devices during a Court Proceeding
New:	Use of Recording Devices <u>in a Courtroom</u>

*Rule 122.1:*

Formerly:	Use of Portable Electronic Devices
New:	Use of Portable Electronic Devices <u>in a Courthouse</u>

As another example, the "definitions" sections of Rules 122 and 122.1 refer to definitions in the companion rule.

### **III. Changes to specific sections of Rule 122:**

**Section (a): Purpose.** A revised first sentence of section (a) deletes the phrase “during a court proceeding,” and instead uses the term “in the courtroom” to parallel the revised rule’s title. There is also a new general provision in this section, as shown in the appendix.

**Section (b): Definitions.** The Wireless Committee adopted a variety of suggestions from the State Bar concerning the definitions in Rule 122(b), including the following:

- The new rule defines, and consistently uses, the word “proceeding” in lieu of interspersed use of that term with “court proceeding.”
- The new rule adds a definition for “judge,” and uses this defined word consistently. With an exception in section (i), this newly defined word allowed the term “presiding judge” and former section (p) concerning “appellate courts” to be eliminated.
- A modified definition of the word “person” clarifies that the term includes any organization except the court. This change allowed removal of an ambiguous exemption of courts from the request requirements of the rule.
- There is a new definition for “victim,” which allowed elimination of the previously used and awkward term “non-party victim.”

**Section (c): Request to cover a court proceeding.** Rule 122(c) [request to cover a court proceeding] was a lengthy block of text. The revised version breaks up the text with five italicized subsection headings, as follows:

- Subsection 1 [*requirements for submission of a request*], requires that a person desiring to cover a proceeding must submit a request to a “judge” as now defined in section (b), rather than to the “judge who will conduct the proceeding.” Alternatively, a person may submit a request to “an office of the court authorized to receive requests under this rule,” which codifies the current practice in Maricopa and Pima counties. The subsection also provides that a person may submit a request for coverage electronically.
- Subsection 2 [*time limit for submitting a request*] was divided into three short sentences that respectively state time limits (A) if the proceeding is a trial, (B) if the proceeding is not a trial, and (C) if the proceeding is scheduled on less than seventy-two hours notice.
- Subsection 3 [*court action upon receiving a request*] requires the court to notify parties of its receipt of a request, and to hold a hearing if the judge intends to deny the request, or if there is an objection to the request.
- Subsection 4 [*time limit for a party to object to a request*] was section (d) of the version proposed by the original rule petition. The current provision

improves the syntax of the previous one, and moving the provision to this subsection enhances the organization of the rule.

- Subsection 5 [*time for a victim or witness to object to a request for coverage*] was located in Rule 122(f) of the previous version. The State Bar's suggestion, which the Wireless Committee has adopted, imposes responsibility to notify a witness of coverage on "anyone" who calls a witness, i.e., it is the responsibility of a self-represented litigant as well as an attorney for a party.

**Section (d): Denial or limitation of coverage.** The State Bar's comments suggested that certain provisions proposed in the original version could benefit from greater clarity and consistency. The revisions to section (d) make substantial changes to the original version in furtherance of this suggestion. These revisions are an amalgam of former section (e) [factors a judge must consider; findings when a judge limits or denies a request for coverage]; section (f) [objection to coverage by a non-party victim or witness]; and section (m)(5) [prohibitions: criminal proceedings]. The Wireless Committee believes that the topics covered by former sections (e), (f), and (m)(5) are best considered as a single subject, to wit, the denial or limitation of coverage.

Section (d) therefore now begins with this premise: "A properly submitted request for coverage should generally be approved, but a judge may deny or may

limit the request as provided in this section.” Following this introduction are two subsections, the first concerning denial of coverage, and the second regarding limitation of coverage.

- Subsection (d)(1) identifies eight factors that a judge must consider when denying a request, or when sustaining a party’s objection to coverage.
- Subsection (d)(2) specifies three ways that a judge may limit coverage. Paragraph (d)(2)(A) provides that a judge in a criminal proceeding on his or her own motion, or upon request of a defendant or a victim, may order that no one may photograph or record the defendant or the victim. (The Wireless Committee added “defendants” to this provision at the State Bar’s suggestion and due to its concern with cases where identification of a defendant might be at issue.) Paragraph (d)(2)(B) would allow a judge in any type of proceeding, on his or her own motion or upon request of a party, victim, or witness, to order that coverage obscure the face and identity of an individual. An order limiting coverage under paragraphs (A) or (B) would require the judge to make specific, on-the-record findings based on the factors in subsection (d)(1). Under paragraph (d)(2)(C), on the judge’s own motion or upon request of a witness, coverage of the testimony of a particular witness in any type of proceeding could be prohibited upon a determination by the judge that

coverage “would have a substantial adverse impact upon that witness or his or her testimony.”

In summary, the revisions to section (d) utilize more effective organization, which increases overall clarity; and better serve the interests of the parties, victims, witnesses, the media, and the justice system.

**Section (e): Manner of coverage.** The former version provided that operators of recording equipment could not move about the courtroom while court was in session. The new version provides that the recording devices themselves, rather than their operators, may not move about the courtroom. A revised provision also provides that operators of recording devices must avoid conduct or dress that may “disrupt” the proceeding.

**Section (f): Equipment.** The previous standard was that equipment meet “current industry standards” and that it be comparable to what is in use “by major broadcast stations.” The State Bar felt that this was not the appropriate standard. The Wireless Committee agreed, and it changed this standard to require that “...equipment used for coverage must be as unobtrusive as recording devices in general use in the community where the courtroom is located, and must not produce distracting sounds or otherwise disrupt the proceeding.”

**Section (h): Personal audio recorders; required notice to the court.** The State Bar commented that it was unnecessary that this section specifically include

“journalists” if anyone could use a personal audio recorder. The Wireless Committee agreed, and it eliminated a reference to “journalists.”

**Section (i): Approving use of a recording device for celebratory or ceremonial proceedings, or while court is not in session.** The State Bar’s comment noted that when court was not in session, it would be more expedient to request permission for coverage from the judge in that courtroom rather than from a presiding judge, as the rule petition had proposed. The Wireless Committee disagreed with the Bar’s comment. First, a court must respond in a uniform manner to requests for coverage in courtrooms that are not in session in order to avoid commercial use of any courtroom; this requires a central point of contact. Second, there may be no judge assigned to an empty courtroom that is the subject of a coverage request. The Wireless Committee’s revised rule therefore includes new, compromise language that would require a person to obtain permission “of the presiding judge of that jurisdiction or an office of the court authorized by the presiding judge to approve requests under this section.”

**Section (k): Prohibitions.** The reorganization of section (d), *supra*, included absorption of a provision concerning criminal proceedings that was previously located in this portion of the rule, allowing its removal from this section. A comment from the State Bar noted an inconsistency between another



subsection concerning “other areas of the courthouse” and Rule 122.1, and after consideration, that subsection too was deleted from this portion of Rule 122.

Two new provisions are included in the revised section (k), so there are now five subsections. The first new prohibition disallows use of recording devices in a courtroom while the judge is off the bench. The second provision prohibits a camera from taking readable images of the contents of documents in the work areas of a judge, court staff, counsel, or the jury. The concepts for these new prohibitions came from a Pima County Media Information Packet used for the trial of a high-profile capital case. All five prohibitions in section (k) now begin with the word “no” for emphasis and for consistency.

**IV. Conclusion.** The Wireless Committee appreciates the work of the State Bar in identifying deficiencies in the version of Rule 122 originally filed with this rule petition, and in noting how that version might be improved. The Wireless Committee has attempted to address the matters raised by the State Bar, and it now submits its revisions to Rule 122 in the appendix to this amended petition.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of May 2013

By /s/\_\_\_\_\_  
Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile  
Technologies and Social Media on Court  
Proceedings  
1501 W. Washington Street  
Phoenix, AZ 85007

Mark-up of the version filed with the original rule petition: deleted text has ~~striketthrough~~; new text has underline

**Rule 122. Use of Recording Devices ~~during in~~ a Court Proceeding Courtroom**

**a. Purpose.** This rule allows the use of recording devices ~~during in~~ a ~~court proceeding~~ courtroom, subject to specified requirements and limitations. A court must use reasonable means to inform the public of the provisions of this rule.

**b. Definitions.** The following definitions apply in this rule. A term defined in the singular includes the plural.

~~(1.)~~ A “camera” is ~~any~~ an electronic or mechanical device used to photograph, record, or broadcast still or moving images.

~~2. A “court proceeding” is an event conducted in a courtroom. A court proceeding does not include an event conducted in judicial chambers, in anterooms, in rooms where jurors assemble or deliberate, or in other areas of the courthouse.~~

(2) A “courtroom” is an area of a “courthouse,” which is defined in Rule 122.1, where a judge or judicial officer conducts a proceeding.

~~(3.)~~ “Cover” and “coverage” refer to a person’s use of a recording device during a ~~court~~ proceeding.

~~(4.)~~ A “judge” is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.

4. ~~(5)~~ A “person” includes an individual and any organization except a ~~the~~ court.

~~5. (6)~~ A “personal audio recorder” is ~~any audio recording~~ a device used to record audio only, and that is on, held by, or immediately next to, a ~~the~~ person who is operating the device.

~~6. (7)~~ A “proceeding” is an event concerning a court case that takes place in a courtroom.

~~(8)~~ A “recording device” is ~~any~~ an electronic or mechanical apparatus and related equipment used to capture and store ~~the~~ sound or ~~the~~ images, or both, ~~of a court proceeding, and~~ or from which a person can retrieve or broadcast sound or images. A camera, a smart phone, and an audio recorder are examples of recording devices.

(9) A “victim” has the same meaning as set out in Rule 39 of the Rules of Criminal Procedure.

**c. Request to cover a ~~court~~ proceeding.** A ~~Except as provided in sections (h) and (i) of this rule, a person who wishes to use a recording device during a court proceeding, other than a~~

~~personal audio recorder as provided in section (j),~~ must submit a written or electronic request to approve coverage cover the proceedings, as follows.

(1) Requirements for submission of a request: The person must submit the request to the judge who will conduct the proceeding, or to an office of the court ~~designated by the presiding judge for receiving~~ authorized to receive requests under this rule. ~~The request must identify at a minimum the person who is submitting it, the case, the proceeding, and the date(s) of the proposed coverage. The submission of a request~~ A person who submits a request to cover a court proceeding ~~provides a person with~~ has standing on the request, but ~~if the submission of a request~~ does not confer upon a that person the status of a party to the case.

(2) Time limit for submission of a request: A person must submit a request sufficiently in advance of the proceeding to allow the judge to consider it in a timely manner.

(A) If the specified proceeding is a trial, a person must submit a request at least seven calendar days before the trial date.

(B) If the proceeding is not a trial, a person must submit a request as soon as possible, and no less than forty-eight hours before the specified start of the proceeding, ~~to allow the judge to consider the request in a timely manner. However,~~

(C) If the court schedules a any proceeding on less than seventy-two hours notice, a person must file the request ~~sufficiently in advance of~~ as soon as reasonably possible before the proceeding as not to delay or interfere with it.

(3) Court action upon receiving a request: The court will notify the parties of its receipt of a request for coverage. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request. ~~A court may provide coverage of its own proceedings, and it is exempt from the requirements of section (e).~~

(4) ~~Time for a party to object to a request:~~ A party waives an objection to a request for coverage unless of a proceeding if the party objects does not object to the request in writing or on the record no later than the ~~commencement~~ start of the ~~specified proceeding, or the conclusion of a hearing held under section (e)(3), whichever occurs first proceeding.~~

(5) Time for a victim or witness to object to a request: A victim or a witness may object to coverage at any time. A victim's attorney, a prosecutor's victim advocate, as well as anyone who calls a witness to testify, has a responsibility to notify that victim or witness of coverage, and his or her right to object, prior to the victim's appearance or the witness' testimony at the proceeding.

~~e. Factors a judge must consider; findings when a judge limits or denies a request for coverage.~~ In deciding whether to approve a person's request to cover a court proceeding or a party's objection to coverage, the judge conducting the proceeding must consider the following factors:

**d. Denial or limitation of coverage:** A properly submitted request for coverage should generally be approved, but a judge may deny or may limit the request as provided in this section. A judge's decision on a coverage request, or on an objection to coverage, is reviewable only by special action.

(1) Denial of coverage: A judge on his or her own motion may deny a request for coverage, or may sustain a party's objection to coverage, only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the following factors, and that the harm outweighs the benefit of coverage to the public.

(4A) The impact of coverage upon the right of any party to a fair hearing or trial;

(2B) The impact of coverage upon the right of privacy of any party, victim, or witness;

(3C) The impact of coverage upon the safety and well-being of any party, victim, witness, or juror;

(4D) The likelihood that coverage would distract participants or that coverage would detract from the dignity of, or would disrupt, a proceeding;

(5E) The adequacy of the physical facilities of the court;

(6F) The timeliness of the request pursuant to section (c)(2) of this rule;

(7G) Whether the person making the request is engaged in the dissemination of news to a broad community; and

(8H) Any other factor affecting the fair administration of justice.

~~The judge conducting the proceeding may limit or deny coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors, and that the harm outweighs the benefit of coverage to the public. A judge's decision to limit or to deny a request for coverage under this rule is reviewable only by special action.~~

**f. Objection to coverage by a non-party victim or witness.** An attorney who represents a non-  
(2) Limitation of coverage: A judge may allow coverage as requested, or may impose the following limitations on coverage after making specific, on-the-record findings based on the factors in subsection (d)(1), or based on paragraph (C) below:

(A) In a criminal proceeding, a judge on his or her own motion or upon request of a defendant or a victim may order that no one may photograph, record, or broadcast the defendant or the victim in the courtroom.

(B) A judge on his or her own motion or upon request of a party, victim, or witness, may order that video coverage must effectively obscure the face and identity of that party, victim, or who calls a witness to testify, must notify that victim or witness of, or that there be only audio coverage of the court proceeding. A non-party victim or witness may object to coverage of his or her appearance or testimony at any time, of a party or a witness.

(C) A judge on his or her own motion or upon request of a witness may grant the objection and prohibit coverage of the appearance or testimony of a particular non-party victim or that witness after consideration of the factors in section (c) and upon a determination that coverage would have a greater substantial adverse impact upon that victim or witness or his or her testimony, that other traditional methods of news reporting.

**g. e. Manner of coverage.** The judge ~~conducting the proceeding~~ will preserve the dignity of the proceeding by designating the placement of equipment and personnel for photographing, recording, or broadcasting the proceeding, and all equipment and personnel will be restricted to the designated area. ~~Operators of recording~~ Recording devices may not be moved about the courtroom while court is in session. All persons and affiliated individuals engaged in the coverage must avoid conduct or dress that may disrupt or detract from the dignity of the proceeding. The judge ~~conducting the proceeding~~ may order a restriction or cessation of coverage during a proceeding in furtherance of the interests of justice.

**h. f. Equipment.** A person must not install, move, or take recording equipment, other than a personal audio recorder, from the courtroom during a ~~court~~ proceeding. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. A person may connect equipment used to provide coverage to an existing courtroom electronic system, if possible, but a person must not connect equipment to a court's digital recording system without the judge's express approval ~~of the judge conducting the proceeding~~. A person must not bring flash devices, strobe lights, or other artificial lights of any kind into the courtroom. If a person wishes to use additional standard light fixtures or higher wattage light bulbs, additional microphones, or other modifications or improvements concerning lighting or sound, the person must submit this information in the request under section (c). The judge may direct whatever modifications or improvements are deemed necessary. ~~The, but the~~ judge may not require that use of public funds be used to make or to maintain any such modifications or improvements. Microphones, cameras, and other equipment used for coverage must ~~meet current industry standards, so that the recording devices are be~~ as unobtrusive and ~~as equivalent in technical quality and sensitivity as recording devices in general use by major broadcast stations in the community where the courtroom is located.~~ Recording devices that, and must not produce distracting sounds ~~are not permitted. Any questions concerning whether particular equipment complies with this rule will be resolved by the presiding judge or a designee~~ otherwise disrupt the proceeding.

**i.g. Number of recording devices; pooling.** A request submitted under section (c) may ask the judge to approve audio coverage, ~~or coverage by video camera or coverage,~~ or coverage by still camera. The presumptive limits are one microphone and recording device for audio coverage, or one video camera and one still camera, but the judge conducting the proceeding has discretion to approve a person's request to use additional recording devices. If a judge approves requests by more than one person to cover a ~~court~~ proceeding, those persons must pool their resources to limit recording devices in the courtroom to the number approved by the judge. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court.

**j.h. Personal audio recorders; required notice to the court.** ~~Any person, including a journalist, may use a personal audio recorder during a court proceeding, but only after the person has given notice of that intended use to~~ must notify the judge or to the judge's staff prior to using the device. A person who uses a personal audio recorder is not required to submit a request under section (c) of this rule, but a person who wishes to record or broadcast the audio portion of a proceeding with a device that is not on the person must do so. The use of a personal audio recorder pursuant to this section ~~may~~ must not be obtrusive, distracting, or otherwise prohibited, and use is subject to the prohibitions of section ~~(m)(2) of this rule.~~ Anyone who wishes to audio record a court proceeding with a device that is not on the person, as specified in section (b)(5), must submit a request pursuant to section (c) of this rule. (k) of this rule.

**k.i. Approving use of a recording device for celebratory or ceremonial proceedings, or while court is not in session.** Notwithstanding other provisions of this rule, a person may verbally request, and a judge may verbally approve, use of a recording device in a courtroom to photograph or to record a celebratory or ceremonial proceeding. If a person wishes to use a recording device in any courtroom when that courtroom is not in session, prior to using the device, the person must obtain the express permission of the presiding judge of that jurisdiction or an office of the court authorized by the presiding judge to approve requests under this section.

**j. Recording not admissible as evidence.** No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule ~~or Rule 122.4~~ may be used to modify or supplement the official court record of that proceeding, nor is it admissible at that or any subsequent proceeding unless it is offered for another purpose allowed under the Arizona Rules of Evidence.

~~**l. Informal approval for use of a recording device.** Notwithstanding other provisions of this rule, a person may verbally request, and a judge conducting the proceeding may verbally approve, use of a recording device in a courtroom to photograph or to record a celebratory or ceremonial court proceeding. A person must obtain the express permission of the presiding judge or a designee to use a recording device in any courtroom when that court is not in session.~~

**m.k. Prohibitions.** Recording or broadcasting A person is not permitted to photograph, record, or broadcast a proceeding in the following circumstances:-

(1) No use of recording devices while the judge is off the bench: A person may use a recording device in a courtroom only when the judge is on the bench, and use of a recording device must terminate when the judge leaves the bench.

(2) ~~Jurors~~ No jurors: Cameras must be placed to avoid showing jurors in any manner. Audio ~~or video~~ recordings or broadcasts of ~~juror interviews~~, jurors' statements, or conversations are also prohibited, except that a juror may expressly consent to an interview after the jury has been discharged.

~~2. (3) Attorney~~ No attorney conferences: Audio recordings or broadcasts of bench conferences between a judge and counsel, or off-the-record conferences between attorneys and their clients, or between attorneys, anywhere in the courthouse are prohibited.

~~3. Other areas of the courthouse.~~ A person whose request under this rule has been granted may not photograph, record in, or broadcast from, locations in a courthouse where a court proceeding is not being conducted, without the judge's express approval.

(4) No readable documents: A person may not use a camera to take readable images of the contents of documents or other materials, whether in electronic or other form, that are located at counsel tables, the judge's bench, the work area of judicial staff, or the jury box.

(5) Juvenile No juvenile proceedings: Photographing, recording, or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in section (h).

~~5. Criminal proceedings.~~ In a criminal proceeding, a judge on his or her own motion may order that no one may photograph, record, or broadcast the victim in the courtroom. The judge may alternatively order that video coverage must effectively obscure the victim's face and identity, or that there may only be audio coverage of the victim's testimony.

~~n. Use of a recording device prohibited without approval.~~ Use of a recording device during court proceedings is prohibited except as allowed by this rule. A court must use reasonable means to inform the public of these prohibitions.

~~o. 1.~~ Other governing law. A person whose request under section (c) of this rule has been approved may photograph, record in, or broadcast from, locations in a courthouse other than a courtroom as provided in Supreme Court Rule 122.1. The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony of a particular witness applies to persons who submit a request or notice under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

~~p. Appellate courts.~~ For coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, any reference in this rule to the "judge conducting the proceeding" or to the "presiding

***R-13-0012***

***Appendix to Amended Petition, Mark-up Version***

~~*judge*” means the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as applicable.~~



**Rule 122. Use of Recording Devices in a Courtroom**

**a. Purpose.** This rule allows the use of recording devices in a courtroom, subject to specified requirements and limitations. A court must use reasonable means to inform the public of the provisions of this rule.

**b. Definitions.** The following definitions apply in this rule. A term defined in the singular includes the plural.

(1) A “*camera*” is an electronic or mechanical device used to photograph, record, or broadcast still or moving images.

(2) A “*courtroom*” is an area of a “*courthouse*,” which is defined in Rule 122.1, where a judge or judicial officer conducts a proceeding.

(3) “*Cover*” and “*coverage*” refer to a person’s use of a recording device during a proceeding.

(4) A “*judge*” is a judicial officer in an appellate, superior, or limited jurisdiction court presiding over a proceeding.

(5) A “*person*” includes an individual and any organization except the court.

(6) A “*personal audio recorder*” is a device used to record audio only, and that is on, held by, or immediately next to, the person who is operating the device.

(7) A “*proceeding*” is an event concerning a court case that takes place in a courtroom.

(8) A “*recording device*” is an electronic or mechanical apparatus and related equipment used to capture and store sound or images, or both, or from which a person can retrieve or broadcast sound or images. A camera, a smart phone, and an audio recorder are examples of recording devices.

(9) A “*victim*” has the same meaning as set out in Rule 39 of the Rules of Criminal Procedure.

**c. Request to cover a proceeding.** Except as provided in sections (h) and (i) of this rule, a person who wishes to use a recording device during a proceeding must submit a written or electronic request to cover the proceeding, as follows.

(1) *Requirements for submission of a request:* The person must submit the request to the judge who will conduct the proceeding, or to an office of the court authorized to receive requests under this rule. A person who submits a request to cover a proceeding has standing on the request, but the submission of a request does not confer upon that person the status of a party to the case.

(2) *Time limit for submission of a request:* A person must submit a request sufficiently in advance of the proceeding to allow the judge to consider it in a timely manner.

(A) If the specified proceeding is a trial, a person must submit a request at least seven calendar days before the trial date.

(B) If the proceeding is not a trial, a person must submit a request as soon as possible, and no less than forty-eight hours before the start of the proceeding.

(C) If the court schedules any proceeding on less than seventy-two hours notice, a person must file the request as soon as reasonably possible before the proceeding as not to delay or interfere with it.

(3) *Court action upon receiving a request:* The court will notify the parties of its receipt of a request for coverage. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request.

(4) *Time for a party to object to a request:* A party waives an objection to a request for coverage of a proceeding if the party does not object to the request in writing or on the record no later than the start of the proceeding.

(5) *Time for a victim or witness to object to a request:* A victim or a witness may object to coverage at any time. A victim's attorney, a prosecutor's victim advocate, as well as anyone who calls a witness to testify, has a responsibility to notify that victim or witness of coverage, and his or her right to object, prior to the victim's appearance or the witness' testimony at the proceeding.

**d. Denial or limitation of coverage.** A properly submitted request for coverage should generally be approved, but a judge may deny or may limit the request as provided in this section. A judge's decision on a coverage request, or on an objection to coverage, is reviewable only by special action.

(1) *Denial of coverage:* A judge on his or her own motion may deny a request for coverage, or may sustain a party's objection to coverage, only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the following factors, and that the harm outweighs the benefit of coverage to the public.

(A) The impact of coverage upon the right of any party to a fair hearing or trial;

(B) The impact of coverage upon the right of privacy of any party, victim, or witness;

(C) The impact of coverage upon the safety and well-being of any party, victim, witness, or juror;

(D) The likelihood that coverage would distract participants or that coverage would detract from the dignity of, or would disrupt, a proceeding;

(E) The adequacy of the physical facilities of the court;

(F) The timeliness of the request pursuant to section (c)(2) of this rule;

(G) Whether the person making the request is engaged in the dissemination of news to a broad community; and

(H) Any other factor affecting the administration of justice.

(2) *Limitation of coverage:* A judge may allow coverage as requested, or may impose the following limitations on coverage after making specific, on-the-record findings based on the factors in subsection (d)(1), or based on paragraph (C) below:

(A) In a criminal proceeding, a judge on his or her own motion or upon request of a defendant or a victim may order that no one may photograph, record, or broadcast the defendant or the victim in the courtroom.

(B) A judge on his or her own motion or upon request of a party, victim, or witness, may order that video coverage must effectively obscure the face and identity of that party, victim, or witness, or that there be only audio coverage of the testimony of a party or a witness.

(C) A judge on his or her own motion or upon request of a witness may prohibit coverage of the testimony of that witness upon a determination that coverage would have a substantial adverse impact upon that witness or his or her testimony.

**e. Manner of coverage.** The judge will preserve the dignity of the proceeding by designating the placement of equipment and personnel for photographing, recording, or broadcasting the proceeding, and all equipment and personnel will be restricted to the designated area. Recording devices may not be moved about the courtroom while court is in session. All persons and affiliated individuals engaged in the coverage must avoid conduct or dress that may disrupt or detract from the dignity of the proceeding. The judge may order a restriction or cessation of coverage during a proceeding in furtherance of the interests of justice.

**f. Equipment.** A person must not install, move, or take recording equipment, other than a personal audio recorder, from the courtroom during a proceeding. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. A person may connect equipment used to provide coverage to an existing courtroom electronic system, if possible, but a person must not connect equipment to a court's digital recording system without the judge's express approval. A person must not bring flash devices, strobe lights, or other artificial lights of any kind into the courtroom. If a person wishes to use additional standard light fixtures or higher wattage light bulbs, additional microphones, or other modifications or improvements concerning lighting or sound, the person must submit this information in the

request under section (c). The judge may direct whatever modifications or improvements are deemed necessary, but the judge may not require use of public funds to make or to maintain any such modifications or improvements. Microphones, cameras, and other equipment used for coverage must be as unobtrusive as recording devices in general use in the community where the courtroom is located, and must not produce distracting sounds or otherwise disrupt the proceeding.

**g. Number of recording devices; pooling.** A request submitted under section (c) may ask the judge to approve audio coverage, video camera coverage, or coverage by still camera. The presumptive limits are one microphone and recording device for audio coverage, or one video camera and one still camera, but the judge conducting the proceeding has discretion to approve a person's request to use additional recording devices. If a judge approves requests by more than one person to cover a proceeding, those persons must pool their resources to limit recording devices in the courtroom to the number approved by the judge. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court.

**h. Personal audio recorders; required notice to the court.** A person may use a personal audio recorder during a proceeding, but the person must notify the judge or the judge's staff prior to using the device. A person who uses a personal audio recorder is not required to submit a request under section (c) of this rule, but a person who wishes to record or broadcast the audio portion of a proceeding with a device that is not on the person must do so. The use of a personal audio recorder must not be obtrusive, distracting, or otherwise prohibited, and use is subject to the prohibitions of section (k) of this rule.

**i. Approving use of a recording device for celebratory or ceremonial proceedings, or while court is not in session.** Notwithstanding other provisions of this rule, a person may verbally request, and a judge may verbally approve, use of a recording device in a courtroom to photograph or to record a celebratory or ceremonial proceeding. If a person wishes to use a recording device in any courtroom when that courtroom is not in session, prior to using the device, the person must obtain the express permission of the presiding judge of that jurisdiction or an office of the court authorized by the presiding judge to approve requests under this section.

**j. Recording not admissible as evidence.** No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule may be used to modify or supplement the official court record of that proceeding, nor is it admissible at that or any subsequent proceeding unless it is offered for another purpose allowed under the Arizona Rules of Evidence.

**k. Prohibitions.** A person is not permitted to photograph, record, or broadcast a proceeding in the following circumstances:

*(1) No use of recording devices while the judge is off the bench:* A person may use a recording device in a courtroom only when the judge is on the bench, and use of a recording device must terminate when the judge leaves the bench.

(2) *No jurors:* Cameras must be placed to avoid showing jurors in any manner. Audio recordings or broadcasts of jurors' statements or conversations are also prohibited, except that a juror may expressly consent to an interview after the jury has been discharged.

(3) *No attorney conferences:* Audio recordings or broadcasts of bench conferences between a judge and counsel, or off-the-record conferences between attorneys and their clients, or between attorneys, anywhere in the courthouse are prohibited.

(4) *No readable documents:* A person may not use a camera to take readable images of the contents of documents or other materials, whether in electronic or other form, that are located at counsel tables, the judge's bench, the work area of judicial staff, or the jury box.

(5) *No juvenile proceedings:* Photographing, recording, or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in section (i).

**I. Other governing law.** A person whose request under section (c) of this rule has been approved may photograph, record in, or broadcast from, locations in a courthouse other than a courtroom as provided in Supreme Court Rule 122.1. The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony of a particular witness applies to persons who submit a request or notice under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.